IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 250 OF 2007

Deorao Porchuji Kohale
and others :: APPELLANTS

-: Versus :-

The State of Maharashtra
and others :: RESPONDENTS

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Mr. C. S. Kaptan, Advocate for the appellants.
Mr. D. B. Patel, A. G. P. for the respondents.

CORAM: SMT. V. A. NAIK, J.
DATED: 03rd August, 2007.

P. C. :

1. Heard the learned Counsel for the parties.

2. The appellants have challenged the judgment and decree passed by the District Judge, Gadchiroli on 12/02/2007 in Regular Civil Appeal No. 46 of 2005, whereby the judgment and decree passed by the Civil Judge, Senior Division, Gadchiroli in Regular Civil Suit No. 28 of 2000 on 21/9/2005 was reversed. The few facts giving rise to this second appeal are stated thus; The appellants are the original plaintiffs who filed regular civil suit against the respondents for a declaration and

permanent mandatory injunction. It was the case of the plaintiffs that plaintiff No. 3 Ganpati Surajagade and his brothers Sitaram and Tulsiram had purchased the suit property from one Ramchandra Tukaram Kondekar on 07/02/1968. Thereafter, Sitaram sold his share to plaintiff No. 2 Pandurang on 08/6/1976. Similarly, Tulsiram sold his share in the suit property to plaintiff No. 1 Deorao Kohale on 25/01/1990.

3. In the revenue records the suit land bearing Kh. No. 140 was shown to be belonging to one Gosavi Janu Sonar. The land was recorded in the name of Gosavi and this fact was depicted from the certified copy of the *Jamabandi* at Exh.40. Later on the said land came to Manjulibai by succession. After the death of Manjulibai, Ramchandra Sonar made an application for mutation of his name in place of Manjulibai. The Case was registered in the year 1961-62. The Naib Tahsildar by an order dated 28/4/1962 directed the Patwari to record the name of Ramchandra Sonar and the Patwari made necessary entries in the mutation register. When plaintiff Deorao Kohale purchased part of the property from Tulsiram, he made an application for recording his name in the revenue record. This application was, however, rejected by respondent No.4-Naib Tahsildar, Gadchiroli on the ground that the land belongs to the Government and it was allotted to Ramchandra as “Patta”. An appeal was preferred by Deorao Kohale under Section 247 of the Maharashtra Land

Revenue Code. However, the same was dismissed on 18/4/1995. The order passed in appeal was challenged before the Additional Collector, Gadchiroli and the matter was remanded by the Additional Collector by his order dated 26/3/1996. On 16/6/1997 the Naib Tahsildar, Gadchiroli again passed an order rejecting the application for mutation. Hence, the plaintiffs once again filed revenue appeal before the Sub Divisional Officer, Gadchiroli. It appeared that some of the records in original revenue case No. 4/1961-62 was not traceable. In view of the aforesaid fact, the Sub Divisional Officer did not take up the matter for hearing. Since the matter was pending before respondent No.2-Sub Divisional Officer for considerable period, the plaintiffs had filed the instant suit.

4. The respondents/defendants filed the written statement and pleaded that the suit was barred under the provisions of Section 11 of the Bombay Revenue Jurisdiction Act. The claim of the plaintiffs was denied by the defendants. According to the Government, the land could not have been transferred without the prior permission of the Government.

5. The parties tendered the evidence on the issues framed by the trial Court and in view of the admission of the witnesses examined on behalf of the Government and on the basis of the revenue record, the trial Court decreed the suit of the plaintiffs. The respondents challenged the judgment and decree passed by the trial Court in

Regular Civil Appeal No. 46 of 2005

6. The first appellate Court reversed the judgment and decree passed by the trial Court and allowed the appeal on the ground that the civil suit filed by the plaintiffs was not maintainable and was barred under the provisions of Section 11 of the Bombay Revenue Jurisdiction Act. The appellants have challenged this judgment in the instant appeal.

7. The only substantial question of law which arises for consideration in this second appeal is; whether the suit filed by the plaintiffs was barred under the provisions of Section 11 of the Bombay Revenue Jurisdiction Act and Section 158 of the Maharashtra Land Revenue Code?

8. Shri Kaptan, the learned Counsel for the appellants has fairly submitted that in view of the clear provisions of Section 11 of the Bombay Revenue Jurisdiction Act and in view of Section 158 of the Maharashtra Land Revenue Code the suit filed by the plaintiffs was not maintainable. He, however, submitted that the occasion to file the present second appeal arose because the trial Court had rendered the findings on the issues on merits and in case the findings recorded by the trial Court and the appellate Court while answering the issues on merits are not set aside they would certainly influence the revenue authorities. The learned Counsel for the appellants, therefore, fairly submitted that not only the findings of the first appellate Court but

the findings of the trial Court are also liable to be set aside as the Civil Court has no jurisdiction to entertain the civil suit.

9. Learned Assistant Government Pleader on behalf of the respondents submitted that the first appellate Court had rightly held that the suit filed by the plaintiffs was not tenable under the provisions of Section 11 of the Bombay Revenue Jurisdiction Act. He further fairly submitted that the Courts ought not have touched the issues on merits when the Courts did not have jurisdiction to entertain and try the civil suit.

10. To answer the aforesaid substantial questions of law involved in this second appeal, it would be necessary to peruse the provisions of Section 11 of the Bombay Revenue Jurisdiction Act, 1876 and Section 158 of the Maharashtra Land Revenue Code, 1966. Section 11 of the Bombay Revenue Jurisdiction Act reads thus;

> "11. **Suits not to be entertained unless plaintiff has exhausted right of appeal**.- Except as otherwise expressly provided in the Maharashtra Land Revenue Code, 1966, no Civil Court shall entertain any suit against the Government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present."

11. It is clear from a bare reading of the provisions of Section 11 that the Civil Court had no jurisdiction to entertain the suit filed by the plaintiffs when the appeal

filed by the plaintiffs against the order of the Naib Tahsildar was pending before respondent No.2-Sub Divisional Officer, Gadchiroli. In view of the aforesaid position, there was a clear bar under Section 11 of the Act, 1876 and the Civil Court did not have jurisdiction to entertain and try the suit filed by the plaintiff. The first substantial question of law is, therefore, answered in the affirmative and in favour of the State.

12. Similarly, to answer the second substantial question of law involved in this second appeal, it is essential to peruse the provisions of Section 158 of the Maharashtra Land Revenue Code, 1966 which read thus;

> "158. **Bar of suits.-** No suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter or to have any entry omitted or amended."

The plaintiffs have sought a declaration and a permanent injunction in respect of prayer clauses A and C in the plaint. These prayer clauses clearly show that the plaintiffs were seeking deletion of mutation entries and the revenue proceedings in that regard were pending before the Sub Divisional Officer, Gadchiroli. Thus, in view of the clear bar under Section 158 of the Code, the plaintiffs could not have instituted the suit in the Civil Court. The second substantial question of law is, therefore, answered in the affirmative and in favour of the State.

13. Having answered both the substantial questions of law in the affirmative, it would now be necessary to set aside the judgment passed by both the Courts as insofar as they decide the dispute between the parties on merits. Both the Courts have decided the civil suit on merits though the suit filed by the plaintiffs was not maintainable in view of Section 11 of the Bombay Revenue Jurisdiction Act and Section 158 of the Maharashtra Land Revenue Code. Since there was no jurisdiction with the Civil Court to entertain and try the suit of the plaintiffs, the findings recorded by the Courts on the merits of the matter, are *non est* and without jurisdiction.

14. For the reasons aforesaid, the second appeal is dismissed. However, though the second appeal stands dismissed, in the peculiar facts and circumstances of the case, the judgment and decree passed by the trial Court and the findings recorded by the appellate Court on all issues other than issues of jurisdiction are liable to be set aside. Hence, they are set aside as such. In the facts and circumstances of the case there would be no order as to costs.

JUDGE

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